



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

NOV 20 2008

The Honorable Wally Herger
U.S. House of Representatives
2268 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Herger:

I am writing to you to bring you up to date on recent discussions between my office, the U.S. Army Corps of Engineers, and representatives for the non-Federal sponsors of the Yuba River Basin project.

The sponsors for the Yuba River Basin project have constructed improvements to the levee system along the Yuba, Feather, and Bear Rivers, to provide flood risk reduction to the residents of the County. The sponsors desire credit for this in-kind work to be afforded toward the non-Federal share of the Marysville ring levee portion of the Yuba River Basin project authorized by Section 101(a)(10) of the Water Resources Development Act (WRDA) of 1999, as amended.

There are two authorities that could be used to afford credit for the sponsors' in-kind work: Section 104 of the Water Resources Development Act of 1986, Public Law 99-662 and Section 3041 of the Water Resources Development Act of 2007, Public Law 110-114. The Corps Headquarters has reviewed the status of the Yuba River Basin project and the procedures for implementing each authority. Because credit eligibility and actual affording of credit can be quite confusing, particularly in the Yuba case, I have described below exactly where we are and my latitude.

As you know, the Sacramento District is currently preparing a General Reevaluation Report (GRR) to reevaluate the project authorized in WRDA 1999, specifically the work along the Yuba River and the Feather River, as well as additional features along the Feather River, the Bear River, and the Interceptor Canal and Best Slough for consideration as part of the Federal project. Based upon available information, the GRR is evaluating alternatives that have substantial changes in the project features from those authorized in WRDA 1999 in order to provide the desired level of protection. In addition, a new project purpose (ecosystem restoration) is under consideration. The uncertainty of the final project features prevents a determination of whether credit could be afforded under either authority for work performed by the sponsors until the Corps completes the GRR and recommends a plan that includes some or all of the non-

Federal work. Further, if the project recommended in the GRR requires a new Congressional authorization, the determination of credit for the work performed by the sponsors cannot be completed until after such authorization is provided.

Section 104 of the Water Resources Development Act of 1986 (Section 104) allows for credit of work performed by non-Federal interests prior to authorization of the project if that work is found to be compatible with the Federal project. As you are aware, this office has approved much of the work the sponsors have performed for potential credit eligibility under Section 104. However, a considerable amount of the work performed by the sponsors was accomplished after authorization of the Yuba River Basin project in WRDA 1999. The approvals included a provision to clarify that the work would be creditable pursuant to Section 104 only if the GRR, discussed above, clearly demonstrates that new Congressional authority is necessary to implement such work. If the GRR demonstrates that the work could be implemented under existing authority, the work would not be creditable under Section 104. Further, the need for additional authorization for the sole purpose of raising the project cost limit established by Section 902 of the WRDA of 1986 does not qualify the work as eligible for credit under Section 104. After the GRR is completed and new Congressional authorization (if required) is provided, a determination of how much of the sponsors' work would be creditable pursuant to Section 104 will be made. Even though no credit can be afforded pursuant to Section 104 until the activities described above have been completed, I will grant an exception to policy that will allow any eligible Section 104 credit performed by the sponsors on the other Yuba River elements to be afforded toward the sponsor's lands, easements, rights-of-way, relocations, and disposal areas (LERRDs) and additional cash requirement for the Marysville Ring levee. This is the only element of the project authorized by WRDA 1999 that is proposed for Federal construction so it is the only element toward which such credit can be afforded. Section 104 does not provide authority to reimburse the sponsors for the value of in-kind work that exceeds the amount of credit that is afforded.

Section 3041 of WRDA 2007 provides credit, in accordance with Section 221 of the Flood Control Act of 1970, toward the non-Federal share of the cost of the Yuba River Basin project authorized in WRDA 1999 for the cost of work carried out by the non-Federal interest for the project before the date of the partnership agreement (PPA) for the project. Because Section 3041 allows for credit in accordance with Section 221, for the sponsors' work to be eligible for credit it must be determined to be integral to the project. After the GRR is completed and new Congressional authorization is provided, if it is needed, a determination whether the work performed by the sponsors is integral to the project can be made. Even though no credit can be afforded pursuant to Section 3041 until the activities described above have been completed, I will grant an exception to policy that will allow any eligible Section 3041 credit performed by the sponsors on the other Yuba River elements to be afforded toward the sponsor's additional cash requirement for the Marysville Ring levee. This is the

only element of the project authorized by WRDA 1999 that is proposed for Federal construction so it is the only element toward which such credit can be afforded. Section 3041 does not provide authority to reimburse the sponsors for the value of in-kind work that exceeds the amount of credit that is afforded.

I understand the urgency of reducing the flood risk in the Marysville area and do not wish to delay construction of the Marysville ring levee. An Engineering Documentation Report (EDR) is being prepared for the Marysville ring levee that will serve as the decision document supporting a PPA. As construction funds have been provided by Congress, the schedule should allow us to be in position to sign the PPA in June 2009. The EDR will document the breakdown between the Federal and non-Federal cost-share and determine the composition of the non-Federal share - i.e. the required 5 percent cash, LERRDs value, and any additional cash that might be needed to meet the 35 percent cost-share for structural flood damage reduction.

Even though no credit can be afforded at this time, there may be other options the sponsors can consider. Section 103(l) of WRDA 1986 allows the Government to permit sponsors to delay its initial cash payment for up to one year after construction has begun, subject to interest payments of up to six months. In addition, Section 103(k) of WRDA 1986 allows the Government to permit the sponsor to defer payment of its cash contribution, with interest, for a period of not more than thirty years from the date of completion of the project or separable element. However, in such case, Congress would have to appropriate funds to cover the non-Federal cash contribution. Either option could potentially assist the sponsors by deferring or delaying their required cash contribution for Marysville while the Corps completes the activities necessary to be able to afford any eligible credit for work performed by the sponsors. The sponsors should discuss these options with the Sacramento District early in the PPA negotiation process.

Please note that we would be most willing to discuss these options with you or your staff in more detail. In addition, we would be most willing to work with you or your staff on a legislative drafting service should you determine that there is a need for more specific legislative direction for this project, and should you request such assistance.

Very truly yours,



John P. Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

November 26, 2008

Jay Punia
The Central Valley Flood Protection Board
3310 El Camino Ave., Suite LL40
Sacramento, CA 95821

Subject: Request for Section 103 Deferral of Non-Federal Share for the Yuba Basin Project

Dear Mr. Punia:

This letter is respectfully submitted by the Yuba County Water Agency to the Central Valley Flood Protection Board to request deferral of the non-Federal contribution for construction of the Marysville Ring levees. The Corps approved the Marysville Ring levee project as a separable element of the Yuba River Basin Project in February, 2008. Marysville is included in the original Yuba River Basin Project authorization (P.L. 106-53) and the 2007 project reauthorization (P.L. 110-114).

Federal law allows a non-Federal sponsor to request, and the Government to approve the sponsor's provision of their required non-Federal contribution for an authorized flood damage reduction project for a period of not more than thirty years. It has been the intent of the non-Federal sponsors to use credits, accumulated through advanced repairs in the RD 784 section of the Yuba River Basin Project, as their cost-share for repairs to the Marysville Ring levees. However, Corps policy will not allow for the application of credit until the Yuba River Basin Project General Reevaluation Report is completed and the reformulated project is authorized by Congress, if required. In a November 20, 2008 letter to U.S. Congressman Wally Herger, the Assistant Secretary of the Army (Civil Works) states that although credit cannot be afforded at this time, the sponsors could consider other options so as not to delay construction of the Marysville Ring levees. This requested deferral, if approved, will eliminate the need to provide the required non-Federal contribution at initiation of construction, and will allow the Corps to begin construction on Marysville in 2010, subject to approval and availability of Federal funding.

Section 103(k) of the Water Resources Development Act of 1986 (P.L. 99-662) authorizes the Federal government to permit a sponsor to defer payment of its full non-Federal contribution for a period of not more than thirty years from the date of completion of the project

or separable element. It is, however, not consistent with the current Administration's policy to support such deferrals without approval of a project exception to this policy by the Assistant Secretary of the Army for Civil Works (ASA(CW)). The Corps' implementing policy guidance for this provision of law is contained in ER 1165-2-131, *Water Resources Policies and Authorities LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS*, DATED 15 April 1989. Paragraph 9.d.(2)(d) states that Section 103(k) will not be applied to flood control projects. However, in his letter of November 20, 2007, the ASA(CW) recognizes the unique circumstances of the Marysville Project and specifically noted the applicability of Section 103(k) for consideration by the non-Federal sponsors for the deferral of their required contribution to support initiation of construction while the Corps completes the activities necessary to be able to afford any eligible credit for work performed by the sponsor.

The City of Marysville in Yuba County, California is bordered by the Yuba River to the south, Jack Slough to the north and the Feather River to the west (see attached map). It is surrounded by 7.5 miles of levees which protect the City from flooding. These levees vary in height from 16 to 28 feet. A 5-foot high levee completely surrounding the City the Marysville was constructed from 1862 to 1875. Due to the accumulation of hydraulic mining debris in the river channels, the levees were raised numerous times to provide sufficient freeboard above elevated river levels. A slurry wall along 0.3 miles of the Ring Levee bordering Jack Slough was installed in 1996 during the Corps' Sacramento River Systems Evaluation project, Phase II. Another 0.8 miles of slurry wall was installed in 1999 just downstream along Jack Slough near the confluence with the Feather River as part of the P.L. 84-99 program. There is a continued threat of flooding to the City of Marysville, and in 1999, Congress authorized additional levee modifications to approximately 5 miles of the Marysville Ring Levee. A break in the existing levee system could inundate Marysville with 20 to 25 feet of water, putting the population of 10,000 in extreme risk.

The Sacramento District is proceeding with the design of improvements for the Marysville Ring Levee with the intent of initiating construction in 2010. The total cost of the project is currently estimated to be \$35 to \$40 Million. The required non-Federal share is estimated to be \$12 to \$14 million. These estimates will be updated as part of the detailed design effort.

The Marysville project is unique because the non-Federal co-sponsors, in partnership with the Three Rivers Levee Improvement Authority (TRLIA), have constructed a significant amount of improvements for the comprehensive Yuba River Basin Project in advance of the Corps General Reevaluation Report (GRR) on the entire project. Coupled with work already complete and scheduled for 2009, the non-Federal sponsors and TRLIA will have invested approximately \$360 million in repairs and improvements for levees in the Yuba River Basin Project. To date, Congress has authorized \$2.7 million in Section 104 credits approved in 1996. Further, the Corps has approved for consideration an additional \$118.7 million, and is evaluating a request to consider an additional \$85.1 million, of Section 104 credits for advanced construction. The final eligibility of these credits is pending the completion of the GRR and

Congressional reauthorization of the project. Copies of these approvals will be forwarded under separate correspondence.

In the November 20, 2008 letter, the ASA (CW) stated that he would grant an exception to policy that would allow any eligible Section 104 and/or Section 3041 credit performed by the sponsors on the other Yuba River elements to be afforded towards the sponsor's requirements, as appropriate, for the Marysville Ring Levee. The total amount of potential credit far exceeds the non-Federal required contribution for the Marysville project. Importantly, it will allow the Corps to proceed with the project without imposing an additional financial burden on the sponsors. The Corps will also continue to complete the activities necessary to determine the eligibility of previous work completed by the sponsors for Section 104 and Section 3041 credits that may be applied toward Marysville.

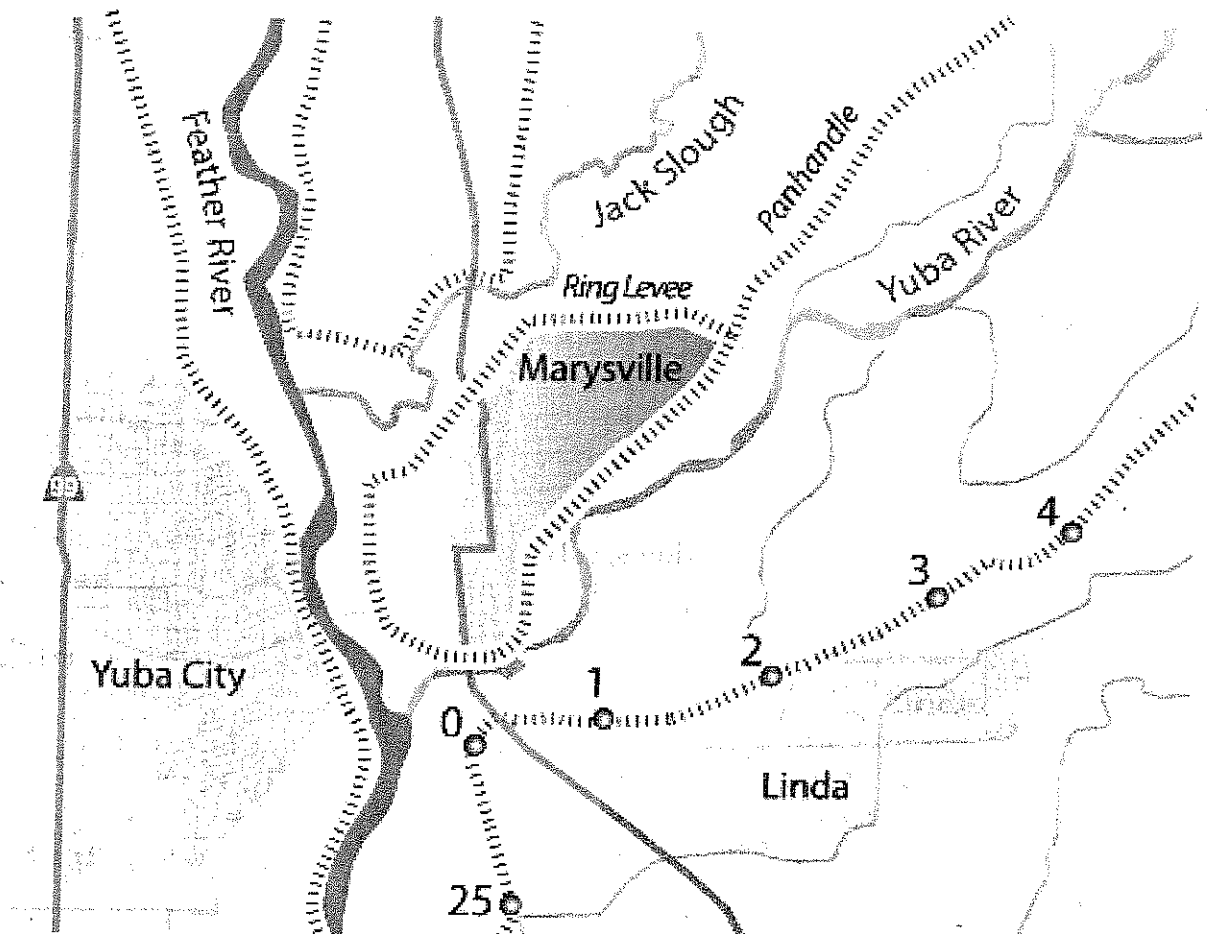
It is requested that the Central Valley Flood Protection Board support YCWA's request forward it onto the Sacramento District Commander, U.S. Army Corps of Engineers for official approval of an exception to existing Administration policy. MBK Engineers has been working on behalf of YCWA, RD 784, and TRLIA to assist us on this matter. If you have any questions on this application, please contact Mr. Ric Reinhardt at (916) 456-4400. Thank you for your assistance.

Sincerely,

Curt Aikens

Attachment

cc: Ric Reinhardt
Mark Ellis
Erin Mullin





DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

AUG 07 2007

MEMORANDUM FOR Director of Civil Works

SUBJECT: Yuba River Basin, California, Feather River Levee Segments 1 and 3,
Section 104 Credit Eligibility Request

This is in response to the South Pacific Division Regional Integration Team's (RIT) July 26, 2007 request to approve an application from Yuba County Water Agency (YCWA) for credit eligibility for levee modifications pursuant to Section 104 of the Water Resources Development Act (WRDA) of 1986. The YCWA application was dated January 23, 2007 and it was endorsed by the State of California Reclamation Board, the non-Federal sponsor, on March 6, 2007. The Sacramento District and South Pacific Division addressed the application in memoranda dated May 18, 2007 and August 2, 2007, respectively.

The Yuba River Basin project, which involved the modification of existing levees, was authorized by Section 101(a)(10) of the WRDA of 1999 at a cost of \$26,600,000. The request indicates that unexpected seepage problems were identified during pre-construction engineering and design efforts initiated after the 1999 authorization, and that correcting the seepage problems is being addressed in a general reevaluation currently underway. The final general reevaluation report (GRR) is expected to recommend modifying the project authorization to increase the project cost and possibly increase the level of flood damage reduction in some areas. We understand that the GRR is scheduled to be complete in late 2008 or in 2009, and that it will probably recommend Congressional authorization to increase the project cost significantly and possibly raise the level of protection in some areas.

Based on the request, the proposed levee modifications would address seepage problems in Segments 1 and 3 of the existing Feather River levee, and thus prevent significant flood damages in Yuba County, California. Segment 1 extends between river miles 13.3 and 17.1 along the Feather River south of Yuba City. Segment 3 extends between river miles 23.6 to 26.1 along the Feather River south of Yuba City and extends along the lower 0.3 miles of the Yuba River east of Yuba City. The proposed modifications include constructing cut-off walls, modifying existing stability berms, and installing new stability berms. This effort is estimated to cost \$32,700,000. We understand that YCWA has not initiated construction of the modifications yet.

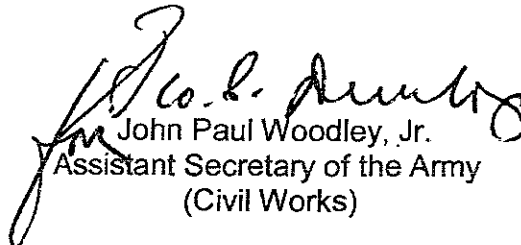
The Corps indicates that the proposed work is within the scope of the GRR and that the work is separately useful for flood damage reduction, integral to the Federal plan, environmentally acceptable, economically justified, and urgently needed to mitigate flood damages. We also understand that the Civil Works Directorate approved,

as delegated, a permit for the same proposed work under Section 408 of the River and Harbors Appropriation Act of 1899, which allows the Secretary to grant permission for altering or permanently occupying public works.

In accordance with paragraph 6a(2) of ER 1162-2-29, General Credit for Flood Control, no credit is available under Section 104 for non-Federal work started after project authorization. In order for a non-Federal interest to receive credit under Section 104, the GRR would have to clearly demonstrate that new authority is necessary to implement the proposed work on Segments 1 and 3. In particular, the proposed work appears to address design deficiencies, which are normally addressed under existing project authority. If the GRR demonstrates that the proposed work could be implemented under existing authority, the non-Federal work would not be creditable under Section 104. A need for additional authorization to raise the project cost limit established by Section 902 of the WRDA of 1986 or to modify other features of the Yuba River Basin project would not make the proposed work on Segments 1 and 3 creditable under Section 104.

Based on the information provided by the Corps at this time that the GRR may recommend additional authorization for Segments 1 and 3, YCWA's request for credit eligibility under Section 104 of the WRDA of 1986 is approved. The Sacramento District Engineer should notify the sponsor of the conditions upon which this approval is being made, particularly those regarding the need for additional project authority. The sponsor should be informed that approval should not be interpreted as a commitment to recommend the project for authorization, approve a specific credit against the non-Federal share of project costs, request construction funding, or approve reimbursement if a Federal project is not undertaken. Final approval of the credit will be subject to the results of the final GRR, Administration review and approval, Congressional authorization, and the other requirements of Section 104 of the WRDA of 1986.

We note that the area protected by the existing levees includes a considerable amount of agricultural and/or vacant land that may provide a significant opportunity for future development. As I've delegated 408 permit authority to the Corps, I want you to ensure this aspect is fully and appropriately examined and addressed in each 408 application. With respect to our joint efforts with FEMA, the Corps needs to ensure we are not inducing new, more costly flood risks by encouraging further floodplain development. As I directed previously, any future Section 104 eligibility request to this office for project work that also involves a Section 408 request will include a copy of the Section 408 request as background information.


John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

WATER RESOURCES DEVELOPMENT ACT OF 1986
Public Law 99-662 (100 STAT. 4087-4088)

SEC. 104. GENERAL CREDIT FOR FLOOD CONTROL.

(a) **GUIDELINES.**—Within one year after the date of enactment of this Act, the Secretary shall issue guidelines to carry out this section, consistent with the principles and guidelines on project formulation. The guidelines shall include criteria for determining whether work carried out by non-Federal interests is compatible with a project for flood control and procedures for making such determinations. The guidelines under this section shall be promulgated after notice in the Federal Register and opportunity for comment.

(b) **ANALYSIS OF COSTS AND BENEFITS.**—The guidelines established under subsection (a) shall provide for the Secretary to consider, in analyzing the costs and benefits of a proposed project for flood control, the costs and benefits produced by any flood control work carried out by non-Federal interests that the Secretary determines to be compatible with the project. For purposes of the preceding sentence the Secretary may consider only work carried out after the date which is 5 years before the first obligation of funds for the reconnaissance study for such project. In no case may work which was carried out more than 5 years before the date of the enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(c) **CREDITING OF NON-FEDERAL SHARE.**—The guidelines established under subsection (a) shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Federal share of the cost of an authorized project for flood control as follows:

(1) Work which is carried out after the end of the reconnaissance study and before the submission to Congress of the final report of the Chief of Engineers on the project and which is determined by the Secretary to be compatible with the project shall be included as part of the project and shall be recommended by the Secretary in the final report for credit against the non-Federal share of the cost of the project.

(2) Work which is carried out after submission of the final report of the Chief of Engineers to Congress and which is determined by the Secretary to be compatible with the project shall be considered as part of the project and shall be credited by the Secretary against the non-Federal share of the cost of the project in accordance with the guidelines promulgated pursuant to subsection (a).

In no event may work which was carried out more than 5 years before the date of enactment of this Act be considered under this subsection, unless otherwise provided in this Act.

(d) **PROCEDURE FOR WORK DONE BEFORE DATE OF ENACTMENT.**—The Secretary shall consider, under subsections (b) and (c), work carried out before the date of enactment of this Act by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) with respect to such work not later than 6 months after guidelines are issued under subsection (a).

(e) PROCEDURE FOR WORK DONE AFTER DATE OF ENACTMENT.—The Secretary shall consider work carried out after the date of enactment of this Act by non-Federal interests on a project for flood control under subsections (b) and (c) in accordance with the guidelines issued under subsection (a). The guidelines shall require prior approval by the Secretary of any flood control work carried out after the date of enactment of this Act in order to be considered under this section, taking into account the economic and environmental feasibility of the project.

(f) LIMITATION NOT APPLICABLE.—Any flood control work included as part of the non-Federal share of the cost of a project under this section shall not be subject to the limitation contained in the last sentence of section 215(a) of the Flood Control Act of 1968.

(g) CASH CONTRIBUTION NOT AFFECTED.—Nothing in this section affects the requirement of section 103(a)(1)(A).

WATER RESOURCES DEVELOPMENT ACT OF 1996
Public Law 104-303 (100 STAT. 3662)

SEC. 101. PROJECT AUTHORIZATIONS.

(a) PROJECTS WITH CHIEF'S REPORTS.—...

(1) AMERICAN RIVER WATERSHED, CALIFORNIA.—

(A) IN GENERAL.—...

(B) CREDIT TOWARD NON-FEDERAL SHARE.—The non-Federal interest shall receive credit toward the non-Federal share of project costs for expenses that the non-Federal interest incurs for design or construction of any of the features authorized under this paragraph before the date on which Federal funds are made available for construction of the project. The amount of credit shall be determined by the Secretary.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

CEMP-SPD

SEP 18 2006

MEMORANDUM FOR Commander, South Pacific Division (CESPD-PDS)

SUBJECT: Request for Credit Under Section 104 of Public Law 99-662 for Flood Control Improvements Within the Yuba River Basin, Yuba County, California

1. By letter dated 18 September 2006, the Assistant Secretary of the Army for Civil Works approved the Yuba County, California, application for credit for raising and strengthening the about one mile of the Yuba River levee from the Union Pacific Railroad to Simpson Lane. The estimated cost of this effort is \$21,000,000. Note that the sponsor's application included amounts to cover cost increases on previously approved credit applications. Those amounts are not included in this approval memo, as the work was previously approved and the final credit amount will be determined upon completion of the work. A copy of the approval memorandum is enclosed.
2. The approval fulfills the requirement that to be eligible for a Section 104 credit, the sponsor's work must receive the approval of the Secretary of the Army before construction. This conditional approval should not be interpreted as a commitment to recommend the project for authorization, approve a specific credit against the non-Federal share of the project costs, request construction funding, or approve reimbursement if a Federal project is not undertaken. Further, the non-Federal sponsor must be notified that the requested amount of credit being sought exceeds the currently estimated non-Federal cost share of the Yuba River Basin project. The Section 104 authority does not provide any authority for reimbursement, therefore, the non-Federal sponsor is taking a risk that they could expend more than they can receive credit for. The determination of work eligible for credit will be subject to the results of the general reevaluation report, Administration review and approval, congressional authorization, and other requirements of Section 104 of WRDA 1986. The final credit amount will be determined upon completion of the work.
3. Pursuant to paragraph 9c of ER 1165-2-29, the Sacramento District will notify the applicant by letter of the conditions upon which this approval is being made. A copy of the notification letter should be provided to this office for information.

FOR THE COMMANDER:

Encl

for Cynthia Geste
JOSEPH F. CALCARA
Chief, SPD - Regional Integration Team
Directorate of Military Programs



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

SEP 18 2006

MEMORANDUM FOR Director of Civil Works

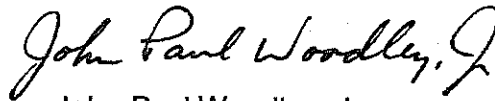
SUBJECT: Yuba River Basin Project, California -- Section 104 Credit Request

This is in response to a August 28, 2006, South Pacific Division Regional Integration Team's request to approve an application from the Yuba County Water Agency, for credit to implement flood control measures pursuant to Section 104 of the Water Resources Development Act (WRDA) of 1986.

The Yuba County Water Agency's application is dated May 2, 2006. The South Pacific Division and Sacramento District have reviewed the application and certify that the proposed work meets the requirements for a credit under Section 104 of the WRDA of 1986. The application is for a credit to raise and strengthen about one mile of the Yuba River levee from the Union Pacific Railroad to Simpson Lane. The estimated cost of these efforts is about \$21,000,000. We understand that construction has not yet begun and that the work is separately useful. The District advises that this proposed effort is being evaluated as part of the current General Reevaluation Review (GRR) study of the Yuba River Basin, California project, and that the work is likely to be separately useful for flood damage reduction, integral to the Federal project, environmentally acceptable, economically justified, and urgently needed to mitigate flood damages. We understand that the GRR is scheduled to be complete by the middle of 2007, and that additional Congressional authorization is needed.

The Yuba County Water Agency's request for a potential credit is approved. The Sacramento District Engineer should notify the sponsor of the conditions upon which this approval is being made. The sponsor should be informed that approval should not be interpreted as a commitment to recommend the project for authorization, approve a specific credit against the non-Federal share of project costs, request construction funding, or approve reimbursement if a Federal project is not undertaken. Further, the non-Federal sponsor must be notified that the requested amount of potential credit requested (\$21,000,000) and that previously approved potential credit (\$65,000,000) would exceed the non-Federal cost share of the currently identified project cost and begin to approach the entire cost of the project based on a current estimated cost (\$86,000,000 potential credit versus estimated project cost of \$125,000,000). Further, the Section 104 authority is only for credit towards a constructed project and does not provide any authority for reimbursement. Therefore, the non-Federal sponsor is taking a risk that they will expend more than may be creditable.

Final approval of the credit will be subject to the results of the GRR, Administration review and approval, Congressional authorization, and the other requirements of Section 104 of the WRDA of 1986.

A handwritten signature in cursive script that reads "John Paul Woodley, Jr.".

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108



REPLY TO
ATTENTION OF

September 3, 2004

MEMORANDUM FOR Director of Civil Works

SUBJECT: Yuba River Basin Project, California -- Section 104 Credit Request

This is in response to an August 17, 2004, South Pacific Division Regional Integration Team's request to approve an application from the Yuba County Water Agency, for credit to implement flood control measures pursuant to Section 104 of the Water Resources Development Act (WRDA) of 1986.

The Yuba County Water Agency's application is dated April 14, 2004. The South Pacific Division and Sacramento District have reviewed the application and certify that the proposed work meets the requirements for a credit under Section 104 of the WRDA of 1986. The application is for a credit to construct a 0.6 mile segment of slurry wall and stability berm on the left bank of the Yuba River. The estimated cost of this effort is \$2,400,000. We understand that construction has not yet begun and that the work is separately useful. The District advises that this proposed effort is being evaluated as part of the current General Reevaluation Review (GRR) study of the Yuba River Basin, California project, and that the work is likely to be separately useful for flood damage reduction, integral to the Federal project, environmentally acceptable, economically justified, and urgently needed to mitigate flood damages. We understand that the GRR is scheduled to be complete by the middle of 2006, and that additional Congressional authorization is needed.

The Yuba County Water Agency's request for a potential credit is approved. The Sacramento District Engineer should notify the sponsor of the conditions upon which this approval is being made. The sponsor should be informed that approval should not be interpreted as a commitment to recommend the project for authorization, approve a specific credit against the non-Federal share of project costs, request construction funding, or approve reimbursement if a Federal project is not undertaken. Final approval will be subject to the results of the GRR, Administration review and approval, Congressional authorization, and the other requirements of Section 104 of the WRDA of 1986.

John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)



Water resources development act of 1986
P.L. 99 - 662

SEC. 103. FLOOD CONTROL AND OTHER PURPOSES.

(a) Flood Control.--

(1) General rule.--The non-Federal interests for a project with costs assigned to flood control (other than a nonstructural project) shall--

(A) pay 5 percent of the cost of the project assigned to flood control during construction of the project;

(B) provide all lands, easements, rights-of-way, and dredged material disposal areas required only for flood control and perform all related necessary relocations; and

(C) provide that portion of the joint costs of lands, easements, rights-of-way, dredged material disposal areas, and relocations which is assigned to flood control.

(2) 25 percent minimum contribution.--If the value of the contributions

required under paragraph (1) of this subsection is less than 25 percent of

the cost of the project assigned to flood control, the non-Federal interest shall pay during construction of the project such additional amounts as are necessary so that the total contribution of the non-Federal

interests under this subsection is equal to 25 percent of the cost of the

project assigned to flood control.

(3) 50 percent maximum.--The non-Federal share under paragraph (1) shall

not exceed 50 percent of the cost of the project assigned to flood control. The preceding sentence does not modify the requirement of paragraph (1)(A) of this subsection.

(4) Deferred payment of amount exceeding 30 percent.--If the total amount of the contribution required under paragraph (1) of this subsection

exceeds 30 percent of the cost of the project assigned to flood control,

the non-Federal interests may pay the amount of the excess to the Secretary over a 15-year period (or such shorter period as may be agreed

to by the Secretary and the non-Federal interests) beginning on the date

construction of the project or separable element is completed, at an interest rate determined pursuant to section 106. The preceding sentence

does not modify the requirement of paragraph (1)(A) of this subsection.

(b) Nonstructural Flood Control Projects.--The non-Federal share of the cost

of nonstructural flood control measures shall be 25 percent of the cost of such measures. The non-Federal interests for any such measures shall be required to provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project, but shall not be required to contribute any amount in cash during construction of the project.

(c) Other Purposes.--The non-Federal share of the cost assigned to other project purposes shall be as follows:

(1) hydroelectric power: 100 percent, except that the marketing of such

power and the recovery of costs of constructing, operating, maintaining,

and rehabilitating such projects shall be in accordance with existing law:

Provided, That after the date of enactment of this Act, the Secretary shall not submit to Congress any proposal for the authorization of any water resources project that has a hydroelectric power component unless such proposal contains the comments of the appropriate Power Marketing Administrator designated pursuant to section 302 of the Department of Energy Organization Act (Public Law 95-91) concerning the appropriate Power Marketing Administration's ability to market the hydroelectric power

expected to be generated and not required in the operation of the project

under the applicable Federal power marketing law, so that, 100 percent of

operation, maintenance and replacement costs, 100 percent of the capital

investment allocated to the purpose of hydroelectric power (with interest

at rates established pursuant to or prescribed by applicable law), and any

other costs assigned in accordance with law for return from power revenues

can be returned within the period set for the return of such costs by or

pursuant to such applicable Federal power marketing law;

(2) municipal and industrial water supply: 100 percent;

(3) agricultural water supply: 35 percent;

(4) recreation, including recreational navigation: 50 percent of separable costs and, in the case of any harbor or inland harbor or channel

project, 50 percent of joint and separable costs allocated to

recreational

navigation;

(5) hurricane and storm damage reduction: 35 percent; and

(6) aquatic plant control: 50 percent of control operations.

(d) Certain Other Costs Assigned to Project Purposes.--Costs of constructing

projects or measures for beach erosion control and water quality enhancement

shall be assigned to appropriate project purposes listed in subsections

(a),

(b), and (c) and shall be shared in the same percentage as the purposes to which the costs are assigned, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by non-Federal interests and all costs assigned to the protection of federally owned shores shall be borne by the United States.

(e) Applicability.--

(1) In general.--This section applies to any project (including any small project which is not specifically authorized by Congress and for which the Secretary has not approved funding before the date of enactment

of this Act), or separable element thereof, on which physical construction

is initiated after April 30, 1986, as determined by the Secretary, except

as provided in paragraph (2).

(2) Exceptions.--This section shall not apply to the Yazoo Basin, Mississippi, Demonstration Erosion Control program, authorized by Public

Law 98-8, or to the Harlan, Kentucky, or Barbourville, Kentucky, elements

of the project authorized by section 202 of Public Law 96-367.

(f) Definition of Separable Element.--For purposes of this Act, the term "separable element" means a portion of a project--

(1) which is physically separable from other portions of the project; and

(2) which--

(A) achieves hydrologic effects, or

(B) produces physical or economic benefits,

which are separately identifiable from those produced by other portions of

the project.

(g) Deferral of Payment.--(1) With respect to the projects listed in paragraph (2), no amount of the non-Federal share required under this section

shall be required to be paid during the three-year period beginning on the

date of enactment of this Act.

(2) The projects referred to in paragraph (1) are the following:

(A) Boeuf and Tensas Rivers, Tensas Basin, Louisiana and Arkansas, authorized by the Flood Control Act of 1946;

(B) Eight Mile Creek, Arkansas, authorized by Public Law 99-88; and

(C) Rocky Bayou Area, Yazoo Backwater Area, Yazoo Basin, Mississippi, authorized by the Flood Control Act approved August 18, 1941.

(h) Assigned Joint and Separable Costs.--The share of the costs specified under this section for each project purpose shall apply to the joint and separable costs of construction of each project assigned to that purpose, except as otherwise specified in this Act.

(i) Lands, Easements, Rights-of-Way, Dredged Material Disposal Areas, and Relocations.--The non-Federal interests for a project to which this section applies shall provide all lands, easements, rights-of-way, and dredged material disposal areas required for the project and perform all necessary relocations, except to the extent limited by any provision of this section. The value of any contribution under the preceding sentence shall be included

in the non-Federal share of the project specified in this section.

(j) Agreement.--

(1) Requirement for agreement.--Any project to which this section applies (other than a project for hydroelectric power) shall be initiated

only after non-Federal interests have entered into binding agreements with

the Secretary to pay 100 percent of the operation, maintenance, and replacement and rehabilitation costs of the project, to pay the non-Federal share of the costs of construction required by this section,

and to hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors.

(2) Elements of agreement.--The agreement required pursuant to paragraph

(1) shall be in accordance with the requirements of section 221 of the Flood Control Act of 1970 (84 Stat. 1818) and shall provide for the rights

and duties of the United States and the non-Federal interest with respect

to the construction, operation, and maintenance of the project, including,

but not limited to, provisions specifying that, in the event the non-Federal interest fails to provide the required non-Federal share of costs for such work, the Secretary--

(A) shall terminate or suspend work on the project unless the

Secretary determines that continuation of the work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests in connection with the project; and (B) may terminate or adjust the rights and privileges of the non-Federal interest to project outputs under the terms of the agreement.

(k) Payment Options.--Except as otherwise provided in this section, the Secretary may permit the full non-Federal contribution to be made without interest during construction of the project or separable element, or with interest at a rate determined pursuant to section 106 over a period of not more than thirty years from the date of completion of the project or separable element. Repayment contracts shall provide for recalculation of the interest rate at five-year intervals.

(l) Delay of Initial Payment.--At the request of any non-Federal interest the Secretary may permit such non-Federal interest to delay the initial payment of any non-Federal contribution under this section or section 101 for up to one year after the date when construction is begun on the project for which such contribution is to be made. Any such delay in initial payment shall be subject to interest charges for up to six months at a rate determined pursuant to section 106.

(m) Ability to Pay.--Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.